IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1584 OF 2001

M/s.Neel Kamal Exhibitors Pvt. Ltd., a Company registered under the Indian Companies Act, having its registered office at 218, Tardeo Road, Mumbai-400 007 ..Petitioner

Versus

1. Brihanmumbai Electric Supply and Transport Undertaking Best Bhavan, BEST Marg, Colaba, Mumbai-400 001.
2. Municipal Corporation of Greater Bombay,Mahanagar Palika, Mumbai-400 001.
3. Shri K.U. Anjaria, Chairman, Review Committee,Brihanmumbai Electric Supply and Transport Undertaking, BEST Bhavan, BEST Marg Mumbai-400 001. ..Respondent

Mr. A.A. Bookwala with Mr. Tushar Bhavsar and Mr. S.P. Kanuga i/b. Sapna N. Nath, for the Petitioner.

Mr. F. Palkhiwala with Mr. Anurag Gokhale i/b. Growford Bayley & Co., for the Respondents

CORAM : F.I. REBELLO & S.P.KUKDAY,JJ.
DATED : 7TH APRIL,2005

ORAL JUDGMENT (PER F.I. REBELLO, J.)

. The petitioners by the present petition have prayed for quashing the order dated 20th June, 2001. That was an order passed pursuant to the meeting of the Review Committee appointed by Respondent No.1. The main challenge in so far as the petitioner is concerned is that the person who acted as the Chairman of the Review Committee in respect of the very subject matter in an earlier petition before this Court had filed an affidavit contesting the claim of the Petitioners. It is, therefore, submitted that by virtue of

that the petitioners were denied a fair hearing and consequently the impugned order on that count alone is liable to be set aside. It is next submitted that the order does not disclose any basis based on which the respondents have made a demand of a sum of over Rs.61.00 lakhs. The order has to disclose some reasonable criteria and as such the impugned order is liable to be set aside. It is also submitted that the respondents have taken into consideration only one period which was a very short period for computing the amount and have not considered the subsequent readings which would have given a fair indication of the consumption of electricity by the Petitioners. Reliance has been placed in the judgment of the Apex Court in the case of **Ashok Kumar Yadav & Ors. v. State of Haryana & Ors., AIR 1987 SC 454.** Reliance is also placed on the judgment in the case of **Ram Chandra Prasad Sharma & Ors. v. State of Bihar & Anr. AIR 1967 SC 349.**

2. On behalf of the Respondents Chandrashekhar Balakrishna Mudaliar, Deputy Chief Engineer (Elec. Supply) has filed an affidavit opposing the grant of the relief. It is pointed out that this is a case of tampering of electric meters. The petitioner were charged for criminal offence where they were found guilty in a case of theft of electricity and convicted with a fine of rs.5,000/-. It is pointed out that in the criminal trial, guilt has to be proved beyond reasonable doubt and having been so done the present petition is liable to be summarily dismissed. In so far as Review Committee is concerned, it is pointed out that

it is an in-house mechanism set up to examine, appraise and consider whether a grievance by a consumer about excessive billing has merit. If the Committee finds that in a given case there is merit in the contention of excessive billing, then the committee reviews the demand/levy. The Committee is neither a judicial nor a quasi judicial body and hence there can be no grievance of violation of principles of natural justice and fair play. It is submitted that a Writ Court in the exercise of its extra ordinary jurisdiction cannot go into sufficiency or adequacy of reasons. In the instant case the Committee has adopted the criteria for calculating the amounts due. It cannot be said that the Committee could not have taken the view that it has taken, based on the meter reading. Once that be the case this Court should not interfere in the exercise of its extra ordinary jurisdiction under Articles 226 and 227 of the Constitution of India. It is pointed out that the petitioners have 3 meters, being meter No.0909255, meter No.770158 and meter No.913638. The meters have been installed for distinct purposes. The first meter records electricity supply for the purpose of passage lighting, projectors, etc. The second meter records electricity supply for running 22 air conditioners installed at the two theatres and the third meter records electricity supply for running the water pump and air conditioner blowers. The Vigilance Cell of the Respondent No.1 had conducted inspection on 11th June, 1998. At that relevant time when the inspection was carried out the Manager and Supervisor of the petitioners were called and were present. It is set out

that earlier on 2nd June, 1998 the meter reader had carried out meter reading. It was found that in respect of all the 3 meters there had been increase in readings when the vigilance Cell had carried out the meter reading. On that very day a provisional claim was prepared by the Vigilance Department. It was prepared on the basis of the connected load of the petitioners and by applying the norms adopted by the 1st respondent in such cases. In view of the huge connected load and consumption of the petitioners being operators of two theatres, the provisional claim with regard to meter No.913638 was Rs.33,36,655/-, the provisional claim for meter No.770158 was Rs.50,22,339/- and for meter No.909255 was Rs.26,72,110/-. The provisional claim worked out to Rs.1,10,31,104/- and was communicated to the petitioners on the very same day. The very next day the petitioners paid a sum of Rs.11.00 lakhs and requested the 1st respondent to replace the 3 meters with electronic meters and for a sympathetic consideration of the meter. The meter was placed before the in-house Review Committee and though it was a practice of Respondent No.1 that 50% amount should be paid, as a special case it was agreed to reconnect supply on payment of Rs.11.00 lakhs. It is specifically set out that the consumption recorded during 9 days between 2nd June, 1998 and 11th June, 1998 was the highest recorded during the previous 3 years indicating that the meter had been consistently tampered with for long period of time to defraud the Undertaking of its rightful dues. As this was the actual consumption of the petitioners this was used as basis for calculating the amount. It is

pointed out that the case of tampering the period of 3 years is taken s it is impossible to ascertain the exact period during which such meters are tampered. Reference is placed on the minutes of the meetings of the Review Committee at which the petitioners participated. With regard to the contention that the Chairman of the Review Committee ought not to have been associated with the Committee in para.23 of the affidavit in reply, it is set out that the Chairman of the Review Committee affirming the affidavit was known to the petitioner. Despite this no grievance or objection was taken. It is also pointed out that the matter had been remanded to the Review Committee pursuant to the order passed by this Court in the earlier Writ Petition being Writ Petition No.2306 of 2000.

3. We have heard learned Counsel for the parties. The first question that has to be addressed is whether Shri K.U. Anjaria who acted as the Chairman of the Review Committee disentitled himself to sit on the Committee in view of the affidavit filed by him before this Court in Writ Petition No.2306 of 2000 and/or as put by the petitioner that they could not get a proper hearing when he was a party. In the case of Ashok Kumar Yadav (supra) the Constitution Bench of the Apex Court has observed that it is one of the fundamental principles of our jurisprudence that no man can be a judge in his own cause and that if there is a reasonable likelihood of bias it is "in accordance with natural justice and commonsence that the justice likely to be so biased should be incapacitated from sitting". The

question is not whether the judge is actually biased but whether there is a real likelihood of bias.

4. The respondents have raised a contention that the Review Committee was neither a judicial nor quasi judicial body and hence there was no need for complying with the principles of natural justice. To us that is immaterial considering the judgment of the Apex Court in Kraipak A.k. vs. Union of India, A.I.r. 1970 SC 150 wherein the Apex Court as far back as in 1973 had laid down that the dividing line between an adminstrative action and quasi judicial order is so thin that it is obiterated. Even otherwise an Administrative body, which decides the rights of parties has to comply with the principles of natural justice and fair play. The contention, therefore, urged on behalf of the Respondents that the principles of natural justice should not be imported in an administrative inquiry has to be rejected.

5. Having said so the question really is whether the impugned order is liable to be set aside on the ground of real likelihood of bias. In G. Sarana Vs. Lucknow University, AIR 1976, S.C. 2428, was a case where in the matter of selection it was alleged that one of the members of the Selection Committee was interested. The contention of the candidate was as such he could not have sat on the Committee. The Apex Court noted that bias can be waived. In other words if a party was aware that the member of the Committee was interested and/or ought not to have

participated in the proceedings but does not protest and participated in the proceedings before the Committee, the plea of bias is waived. In the instant case the Respondents have specifically pleaded that the petitioners were aware that Shri K.U. Anjaria had filed an affidavit and inspite of knowing that they had not raised any objection. Once that be the case it can be said that the petitioners having not raised the objection and participated in the proceedings before the Review Committee cannot now for the first time before this Court contend that the impugned order is bad and should be set aside on the ground that the Chairman of the Committee was interested and consequently ought not have participated in the proceedings. The said contention as urged on behalf of the petitioners, therefore, is liable to be rejected.

6. We then come to the second contention of tampering. In the instant case the respondents have relied on the Judgment of the Magistrate who by an order dated 26th August,2004 had convicted the Directors of petitioners and imposed punishment till rising of the Court and to pay a fine of Rs.5,000/- and in default to suffer R.I. for two months. It is pointed out, that an Appeal has been preferred. In the Appeal, only the sentence of imprisonment was set aside but the fine imposed was maintained. It is, therefore, clear that in so far as the facts of this case are concerned, the respondents have been able to establish that there was a tampering of the meters.

. Once that be the case, the question which arises is whether the formula adopted by the respondents can be said to be arbitrary or based on no known principle. As noted earlier, the provisional demand made was on the petitioners based on the load connected. Based on that a provisional bill was worked out and sent to the petitioners in a sum of Rs.1,10,31,104/-. The matter was thereafter placed before the Review Committee. The Review Committee first met on 17th June, 1999 when Shri Gul Achara, the Chairman of the petitioner was present. He was asked whether Generators were used for getting supply of electricity to the premises. His answer was that they do not have any Generator facility for their theatre and are using BEST's electric supply in their theatre. Similarly, the petitioners participated in the meeting held on 19th August, 1999 where the Chairman of the petitioner was informed that the explanation given by him and as recorded in the minutes was not acceptable. The first meeting was in fact held on 11th March, 1999 wherein a query was asked by the Chairman regarding the consumption pattern one month prior to the reading, to which the answer was that there was no change in the connected load and pattern of use of electricity for long time and even after the reading the consumption is as before. The question, therefore, before the Review Committee after having arrived at a conclusion when there was tampering of meters was to adopt reasonable criteria. They had before them the criteria of basing it on the load or based on the reading between 2nd June, 1998 and 9th June, 1998. The later demand

would be less then the demand based on the load connected. They have followed the criteria of consumption between 2nd June, 1998 and 9th June, 1998. It cannot be said that the principle of criteria followed by the committee is arbitrary or based on no principle. In our opinion the committee has adopted a rational principle. It is not for this Court in the exercise of its extra ordinary jurisdiction to interfere with the principle adopted as long as such a principle could have been adopted. We, therefore, find no merit in the second contention.

7. It was submitted that the matter does not disclose the period based on which the demand was made. At the hearing of the petition on behalf of the respondents their learned counsel has pointed out in the affidavit filed that the demand is for 3 years from the date on which the tampering was known. They have adopted the principle as any claim beyond the said period may be barred by limitation. Therefore, the principle followed is 3 years period from the date of tampering. It was not necessary to set that out in the order as long as it is possible to know the basis for the period when the demand was made. That contention, therefore, must also be rejected.

8. Having said so and the objections as raised by the petitioners are devoid of merit we find no merit in this petition which is accordingly dismissed.

9. Learned Counsel on behalf of the petitioners seek

stay of operation of the above order for a period of six weeks. Order not to be given effect to for a period of six weeks from today.

(F.I. REBELLO , J.)

(S.P.KUKDAY, J)